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NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WHA

\* \* \*

BOARD OF TRUSTEES OF THE PIPE  
TRADES DISTRICT COUNCIL NO. 36  
HEALTH AND WELFARE TRUST FUND;  
BOARD OF TRUSTEES OF THE PIPE  
TRADES DISTRICT COUNCIL NO. 36  
PENSION TRUST FUND; BOARD OF  
TRUSTEES OF THE PIPE TRADES  
DISTRICT COUNCIL NO. 36 APPRENTICE  
TRAINING TRUST FUND; BOARD OF  
TRUSTEES OF THE CENTRAL  
CALIFORNIA PIPE TRADES INDUSTRY  
LABOR-MANAGEMENT COOPERATION  
COMMITTEE TRUST FUND,

Plaintiffs,

v.

RUTLEDGE PLUMBING, INC., a California  
corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No. 08

3530

COMPLAINT FOR:

- (1) BREACH OF COLLECTIVE  
BARGAINING AGREEMENT;  
AND
- (2) ACCOUNTING

Plaintiffs Board of Trustees of the Pipe Trades District Council No. 36 Health and Welfare Trust Fund, Board of Trustees of the Pipe Trades District Council No. 36 Pension Trust Fund, Board of Trustees of the Pipe Trades District Council No. 36 Apprentice Training Trust Fund, and Board of Trustees of the Central California Pipe Trades Industry Labor-Management Cooperation Committee Trust Fund (collectively, "Plaintiffs") allege the following against defendants Rutledge Plumbing, Inc. and DOES 1 through 50 (collectively, "Defendants"):

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1 **NATURE OF THE ACTION**

2 1. This action arises under Sections 1132 and 1145 of the Employee Retirement  
3 Income Security Act of 1974 ("ERISA"), and Section 301 of the Labor Management Relations  
4 Act ("LMRA"). Plaintiffs herein allege that Defendants have failed and refused to make certain  
5 required payments to joint labor-management trust funds and employee benefit plans in violation  
6 of a collective bargaining agreement and certain trust agreements.

7 **JURISDICTION AND VENUE**

8 2. Jurisdiction of this Court is invoked pursuant to 29 U.S.C. § 1132(e)(1) and 28  
9 U.S.C. §§ 1331 and 1337. Pursuant to 29 U.S.C. § 1132(f), jurisdiction is founded upon Sections  
10 502 and 515 of ERISA, and Section 301 of the LMRA.

11 3. Venue is proper in this District pursuant to Section 502(e)(2) of ERISA, and  
12 Section 301(a) of the LMRA, in that the plans alleged herein are administered within the  
13 Northern District of California.

14 **PARTIES**

15 4. Each of the above named Plaintiffs, except for the Board of Trustees of the  
16 Central California Pipe Trades Industry Labor-Management Cooperation Committee Trust Fund  
17 was, and is: the Plan Administrator of employee benefit plans within the meaning of Section 3(3)  
18 of ERISA; a fiduciary within the meaning of Section 3(2)(A)(iii) of ERISA; and the named  
19 fiduciary within the meaning of Section 402 (a)(1) of ERISA.

20 5. Plaintiff Board of Trustees of the Central California Pipe Trades Industry Labor-  
21 Management Cooperation Committee Trust Fund is a joint labor-management trust fund  
22 organized pursuant to Section 302(c)(9) of the LMRA and Section 6(b) of the Labor  
23 Management Cooperation Act of 1978 ("LMCA").

24 6. Each Plaintiff has a fiduciary duty to the employees of Defendants to collect  
25 funds, invest and administer said funds, and protect said funds from claims.

26 7. At all relevant times herein, Rutledge Plumbing, Inc. ("Employer") was engaged  
27 in the construction industry in the State of California, and as such, was engaged in commerce, or  
28 in an industry affecting commerce, within the meaning of the National Labor Relations Act

1 (“NRLA”) and ERISA. As such, said defendant is an employer within the meaning of ERISA.

2 8. DOES 1 through 50, inclusive, are sued herein under fictitious names. Their true  
3 names and capacities are unknown to Plaintiffs. When their true names and capacities are  
4 ascertained, Plaintiffs will amend this complaint by inserting their true names and capacities  
5 herein. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named  
6 defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiffs’  
7 damages as alleged herein were proximately caused by such defendants.

8 **ALLEGATIONS COMMON TO ALL COUNTS**

9 9. Employer is a signatory to a collective bargaining agreement with the Pipe Trades  
10 District Council No. 36 of the Association of Journeymen and Apprentices of the Plumbing &  
11 Pipefitting Industry of the United States and Canada, AFL-CIO, and various trust agreements  
12 establishing each of the Plaintiff trust funds (collectively, “Agreements”).

13 10. Pursuant to said written Agreements, Employer promised that it would pay fringe  
14 benefit contributions for all work performed by covered employees, with said payments to be  
15 received by Plaintiffs at their place of business on or before the twentieth (20th) day of each  
16 successive month.

17 11. Employer further promised that it would withhold certain monies from each  
18 employee’s paycheck and remit said monies to a vacation fund for each of said employees, and  
19 that it would contribute toward the contract administration and hiring hall expenses incurred by  
20 Plaintiffs in administering the Agreements.

21 12. The Agreements further provide that delinquent contributions owed to all  
22 Plaintiffs, except to the Board of Trustees of the Central California Pipe Trades Industry Labor-  
23 Management Cooperation Committee Trust Fund, would be subject to liquidated damages equal  
24 to twelve percent (12%) of the contribution amounts, or \$40.00, whichever is greater, which  
25 increases to twenty percent (20%) of the delinquent contributions if Plaintiffs are forced to  
26 initiate legal action upon said contributions. Said liquidated damages, and increase, are not  
27 penalties. Rather, it is impracticable and extremely difficult to fix the actual damages suffered by  
28 Plaintiffs as a result of said delinquencies. As such, the liquidated damages represent a

1 reasonable endeavor by the parties to ascertain, and compensate Plaintiffs for, the damages  
2 resulting from said delinquencies.

3 13. The Agreements further provide that the delinquent contributions and liquidated  
4 damages shall accrue prejudgment interest at a rate of twelve percent (12%) per annum, from the  
5 respective due date of each contribution to the date of payment.

6 14. Pursuant to 29 U.S.C. § 1132(g)(2)(D) and the various Agreements herein, a  
7 delinquent employer is further liable for all reasonable attorneys' fees and costs incurred by  
8 Plaintiffs with respect to any delinquent contribution, including but not limited to, all reasonable  
9 expenses incurred in preparation for the lawsuit, accounting fees, all legal costs, court costs, cost  
10 of bonds, and attorneys' fees, according to proof.

11 **FIRST CLAIM FOR RELIEF**  
12 **(Breach of Collective Bargaining Agreement; Unpaid/Delinquent Contributions)**  
13 **Against All Defendants**

14 15. Plaintiffs incorporate herein by reference all of the allegations of paragraphs 1  
15 through 14, inclusive, of this complaint as though the same were fully set forth herein.

16 16. Plaintiffs have performed all conditions, covenants and promises required on their  
17 respective parts by the Agreements, and in accordance with the terms and conditions thereof,  
18 except for those acts that have been prevented, delayed or excused by the consent, acts or  
19 omissions of Defendants.

20 17. Plaintiffs are informed and believe, and thereon allege, that Employer performed  
21 services within Plaintiffs' jurisdiction, and under the Agreements, from March 2008 through  
22 May 2008.

23 18. However, Defendants have failed and refused to submit the monthly contribution  
24 reports, or all of the corresponding contributions (including the vacation fund withholdings, and  
25 contract administration and hiring hall expenses), for those time periods, despite Plaintiffs'  
26 repeated demands for the same. Plaintiffs are therefore forced to bring the present action against  
27 Defendants for said reports and contributions.

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19. Said unpaid contributions are further subject to liquidated damages of twenty percent (20%), and prejudgment interest of twelve percent (12%), both as alleged above, in amounts according to proof.

20. Furthermore, Employer was delinquent in remitting its monthly contribution reports for the time period of October 2007 through January 2008. Pursuant to the Agreements, said delinquencies are also subject to liquidated damages, in the additional amount of \$992.08.

21. Finally, pursuant to 29 U.S.C. § 1132(g)(2)(D) and the various Agreements herein, Employer is obligated to pay Plaintiffs for all reasonable attorneys' fees and costs incurred by the latter with respect to these delinquent contributions, in amounts according to proof.

**SECOND CLAIM FOR RELIEF**  
**(Breach of Collective Bargaining Agreement; Underreported Hours)**  
**Against All Defendants**

22. Plaintiffs incorporate herein by reference all the allegations of paragraphs 1 through 14, inclusive, of this complaint as though the same were fully set forth herein.

23. Plaintiffs have performed all conditions, covenants and promises required on their respective parts by the Agreements, and in accordance with the terms and conditions thereof, except for those acts that have been prevented, delayed or excused by the consent, acts or omissions of Defendants.

24. Plaintiffs are informed and believe, and thereon allege, that Defendants underreported the hours worked by various covered employees, and that said underreporting has resulted in underpayments to Plaintiffs of various contributions. Plaintiffs are therefore informed and believe, and thereupon allege, that additional amounts are due and owing to them, in amounts according to proof.

25. Said underreported hours, and their corresponding underpayments, are further subject to liquidated damages of twenty percent (20%), and prejudgment interest of twelve percent (12%), both as alleged above, in amounts according to proof.

26. Finally, pursuant to 29 U.S.C. § 1132(g)(2)(D) and the various Agreements herein, Employer is obligated to pay Plaintiffs for all reasonable attorneys' fees and costs



1 incurred by the latter with respect to these delinquent contributions, in amounts according to  
2 proof.

3 **THIRD CLAIM FOR RELIEF**  
4 **(Accounting)**  
5 **Against All Defendants**

6 27. Plaintiffs incorporate herein by reference all the allegations of paragraphs 1  
7 through 26, inclusive, of this complaint as though the same were fully set forth herein.

8 28. Pursuant to the Agreements, Plaintiffs are authorized to conduct an audit or  
9 accounting examination of the payroll books and records of Employer, and furthermore, to  
10 examine any and all reports and returns prepared by Employer concerning the time worked by,  
11 and/or compensation paid to, employees performing work covered by the Agreements. Employer  
12 is required to maintain, and provide to Plaintiffs upon demand, all records substantiating its  
13 contribution reports. Employer is further required to provide, upon request, any information  
14 relevant and suitable to the administration of the trust funds.

15 29. As alleged above, the monthly contributions, liquidated damages and prejudgment  
16 interest due from Defendants to Plaintiffs is unknown to the latter, and cannot be ascertained  
17 without an accounting of Employer's records.

18 30. Plaintiffs have demanded that Employer account for the above transactions, and  
19 pay the amounts found due to Plaintiffs. However, Defendants have failed and refused to render  
20 the accounting, or remit said amounts, to Plaintiffs.

21 31. The Agreements further provide that, in the event an employer is delinquent in  
22 remitting its contributions, the employer shall be liable for all reasonable accounting fees. As  
23 such, Employer is also liable for all costs incurred for said audit or examination, according to  
24 proof.

25 **PRAYER**

26 WHEREFORE, Plaintiffs pray for judgment as follows, in amounts according to proof:

27 On the First and Second Claims for Relief:

- 28 1. for general damages, comprising the unpaid and underpaid contributions, vacation  
fund withholdings, and contract administration and hiring hall expenses;

2. for liquidated damages of twenty percent (20%) on all unpaid and underpaid contributions, except to the Board of Trustees of the Central California Pipe Trades Industry Labor-Management Cooperation Committee Trust Fund;
3. for prejudgment interest of twelve percent (12%) per annum; and
4. for reasonable attorneys' fees.

On the Third Claim for Relief:

1. for a general accounting of the books and records of Employer;
2. for payment of all unpaid and underpaid contributions, vacation fund withholdings, and contract administration and hiring hall expenses owed by Defendants;
3. for liquidated damages of twenty percent (20%) on all unpaid and underpaid contributions, except to the Board of Trustees of the Central California Pipe Trades Industry Labor-Management Cooperation Committee Trust Fund);
4. for prejudgment interest of twelve percent (12%) per annum; and
5. for all costs incurred by Plaintiffs in conducting the audit.

On All Claims for Relief:

1. for post-judgment interest at the maximum legal rate from the date of judgment;
2. for costs of suit incurred herein; and
3. for such other and further relief as the court may deem just and proper.

Dated: July 22, 2008.

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By   
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